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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/777,761
Filing Date: February 06, 2001
Appellant(s): MURPHY, GERALD B.

MAILED

DEC 13 2007

GROUP 3600

John D. Goodhue
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 8/13/07 appealing from the Office action
mailed 1/3/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 2002/0059091 A1	HAY et al.	5-2002
US 2002/0023052 A1	REMLEY et al.	2-2002

US 6,990,459 B2

SCHNEIDER

1-2006

O'Brien, D. M. "Grain Marketing Plans for Farmers," Kansas State University
Agricultural Experiment Station and Cooperative Extension Service, July 2000.

Friedman, J. "Dictionary of Business Terms," 2000, Barron's Business Guides,
3rd Edition, pages 757-758.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all
obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable
over Hay et al. (US 2002/0059091 A1) in view of Remley et al. (US 2002/0023052 A1),
and further in view of O'Brien ("Grain Marketing Plans for Farmers").

(A) Referring to claim 15, Hay discloses a computer-assisted method of providing
agricultural services to independent agricultural producers to assist in raising income of
the agricultural producers comprising (para. 58, para. 24 and para. 39 of Hay):

wherein the step of developing agricultural plans for each of the agricultural producers comprises

- (a) eliciting information from the producer (para. 62 of Hay);
- (b) performing a financial assessment for an agricultural business of the independent producer (para. 52 of Hay);
- (c) determining a financial assessment score based on the financial assessment (para. 51 and para. 52 of Hay; the Examiner interprets "factor" to be a form of "score"); and
- (d) calculating a marketing financial risk score wherein the marketing financial risk score is defined as a numeric value describing financial risks related to markets and income of each agricultural enterprise associated with the agricultural business (para. 52 of Hay); and
- (e) determining pre-sell quantities using the financial assessment score and the marketing financial risk score (para. 62, para. 68, para. 118, para. 113, and para. 52 of Hay);

Hay does not disclose tying financial obligations of the agricultural producers to the use of written agricultural marketing action plans such that the agricultural producers are required to commit to using the written agricultural marketing plans as a condition for receiving financing and wherein the updated marketing information comprises probabilities of price targets.

Remley discloses tying financial obligations of the agricultural producers to the use of the agricultural plans such that the agricultural producers are required to commit

to using the agricultural plans as a condition for receiving financing (para. 7 and para. 41 of Remley); and wherein the updated marketing information comprises probabilities of price targets (para. 5 of Remley).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of Remley within Hay. The motivation for doing so would have been for the guarantor and the producer to both benefit from the arrangement and to reduce the risks associated with the agriculture business (para. 4 of Remley).

Hay and Remley do not expressly disclose developing written agricultural marketing action plans for the agricultural producers, the agricultural marketing action plans requiring updated marketing information, providing marketing information to the agricultural producers in order to update the agricultural marketing plans; determining pre-sell quantities using a price risk associated with a commodity market, (f) calculating a level of crop-revenue insurance to assure a predetermined level of income from sale of predetermined pre-sell quantities of crops for use in meeting the financial obligations, such that the financing is underwritten by pre-selling and the pre-selling is underwritten by the level of crop insurance, and (g) forming a plan of action for agricultural marketing which makes decisions based on the marketing information, the financial assessment, the marketing financial risk score, the pre-sell quantities, and the level of crop revenue insurance.

O'Brien discloses developing written agricultural marketing action plans for the agricultural producers, the agricultural marketing action plans requiring updated

marketing information (page 20 of O'Brien), providing marketing information to the agricultural producers in order to update the agricultural marketing plans (page 20 of O'Brien); determining pre-sell quantities using a price risk associated with a commodity market (pages 5-6, and 18 of O'Brien), (f) calculating a level of crop revenue insurance to assure a predetermined level of income from sale of predetermined pre-sell quantities of crops for use in meeting the financial obligations, such that the financing is underwritten by pre-selling and the pre-selling is underwritten by the level of crop insurance (pages 13-14, and 19 of O'Brien) and (g) forming a plan of action for agricultural marketing which makes decisions based on the marketing information, the financial assessment, the marketing financial risk, the pre-sell quantities, and the level of crop revenue insurance (pages 4-5 and 21-22 of O'Brien).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of O'Brien within Hay and Remley. The motivation for doing so would have been for farmer-marketers to enhance or improve their selling or purchase prices of crops (page 5 of O'Brien).

(B) Referring to claim 29, Hay discloses a computer-assisted method of creating a strategic independent agricultural plan for an agricultural business, comprising (para. 58 and para. 39 of Hay):

determining a financial assessment score for the agricultural business (para. 51 and para. 52 of Hay)

determining a marketing financial risk score for each agricultural enterprise of the business, the marketing financial risk score associated with financial risks related to markets and income of each of the agricultural enterprises (para. 52 of Hay)

determining pre-sell quantities of crops for pre-selling for each of the agricultural enterprises (para. 65 and para. 104 of Hay).

Hay does not disclose determining a level of assured income for each of the agricultural enterprises.

Remley discloses determining a level of assured income for each of the agricultural enterprises (para. 3, para. 4, para. 40, and para. 41 of Remley).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of Remley within Hay. The motivation for doing so would have been to reduce the risks associated with the agriculture business (para. 4 of Remley).

Hay and Remley do not disclose receiving a price risk from a marketing service, wherein the price risk is a price risk associated with a commodity market and is determined using a computer analysis and calculating a level of crop revenue insurance for each of the agricultural enterprises to protect revenue generated from pre-selling, thereby underwriting the pre-selling with the crop revenue insurance and underwriting the assured income with the pre-selling.

O'Brien discloses receiving a price risk from a marketing service, wherein the price risk is a price risk associated with a commodity market (pages 5-6 and 18 of O'Brien) and calculating a level of crop revenue insurance for each of the agricultural

enterprises to protect revenue generated from pre-selling, thereby underwriting the pre-selling with the crop revenue insurance and underwriting the assured income with the pre-selling (pages 13-14 and 19 of O'Brien).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of O'Brien within Hay and Remley. The motivation for doing so would have been for farmer-marketers to enhance or improve their selling or purchase prices of crops (page 5 of O'Brien).

Claims 17 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hay et al. (US 2002/0059091 A1) in view of O'Brien ("Grain Marketing Plans for Farmers").

(A) Referring to claim 17, Hay discloses a computer-assisted method of creating a strategic agricultural plan for an agricultural business of an independent agricultural producer comprising (para. 58 and para. 39 of Hay):

eliciting information from a producer (para. 62 of Hay);

performing a financial assessment of the business of the independent agricultural producer (para. 52 of Hay);

determining a financial assessment score based on the financial assessment (para. 51 and para. 52 of Hay);

calculating a marketing financial risk score wherein the marketing financial risk score is defined as a numeric value describing financial assessment factors associated

with financial risks related to markets and income of each enterprise of the agricultural businesses (para. 52 of Hay); and

determining pre-sell quantities using the financial assessment score and the marketing financial risk score (para. 62, para. 68, para. 118, para. 113, and para. 52 of Hay).

Hay does not expressly disclose receiving a price risk from a marketing service, wherein the price risk is a price risk of a commodity market and is determined based on a computer analysis; determining pre-sell quantities using the price risk of the commodity market; and calculating a level of crop revenue insurance to assure at least a predetermined level of income from sale of predetermined pre-sell quantities of crops, thereby underwriting the predetermined level of income by pre-selling and underwriting the pre-selling by the level of crop revenue insurance.

O'Brien discloses receiving a price risk from a marketing service, wherein the price risk is a price risk of a commodity market; determining pre-sell quantities using the price risk of the commodity market (pages 5-6 and 18 of O'Brien); and calculating a level of crop revenue insurance to assure at least a predetermined level of income from sale of predetermined pre-sell quantities of crops, thereby underwriting the predetermined level of income by pre-selling and underwriting the pre-selling by the level of crop revenue insurance (pages 13-14 and 19 of O'Brien).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of O'Brien within Hay. The

motivation for doing so would have been for farmer-marketers to enhance or improve their selling or purchase prices of crops (page 5 of O'Brien).

(B) Referring to claim 23, Hay discloses computing a marketing financial risk (para. 51 and para. 52 of Hay). Hay does not expressly teach the specific data recited in claim 23; however, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); *MPEP* § 2106.

Further, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the computing parameters disclosed in the prior art to include similar parameters with the motivation of accommodating user preferences in prioritizing the type of weighted averages to be computed.

Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Remley et al. (US 2002/0023052 A1) in view of Hay et al. (US 2002/0059091 A1), and further in view of O'Brien ("Grain Marketing Plans for Farmers").

(A) Referring to claims 18 and 19, Remley discloses a method of providing assured income for agricultural crops comprising (see abstract of Remley):

underwriting financing of a producer of the agricultural crops by developing a plan for the producer which provides the assured income based on a minimum level of crop yield and a predetermined minimum crop price achieved by pre-selling (para. 5, para. 6, and para. 7 of Remley),

capturing additional income beyond the assured income (para. 36 of Remley) and wherein the financing is provided to a producer conditioned on use of the strategic plan (para. 35 and para. 41 of Remley).

Remley does not disclose the determination of a financial assessment score associated with the producer and a marketing financial risk score defining financial risks related to markets and income of the producer to assist in determining the assured income for the producer

Hay discloses disclose the determination of a financial assessment score associated with the producer and a marketing financial risk score defining financial risks related to markets and income of the producer to assist in determining the assured income for the producer (para. 51, para. 52, and para. 64 of Hay).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of Hay within Remley. The motivation for doing so would have been to identify risk factors associated with the farm of interest (para. 51 of Hay).

Remley and Hay do not expressly disclose implementing a strategic marketing plan and updating the strategic marketing plan with electronically supplied updated

marketing information and underwriting the strategic marketing plan with crop insurance to assure the minimum level of crop to be sold.

O'Brien discloses implementing a strategic marketing plan and updating the strategic marketing plan with electronically supplied updated marketing information (page 20 of O'Brien) and underwriting the strategic marketing plan with crop insurance to assure the minimum level of crop to be sold (pages 13-14 and 19 of O'Brien).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of O'Brien within Remley and Hay. The motivation for doing so would have been for farmer-marketers to enhance or improve their selling or purchase prices of crops (page 5 of O'Brien).

Claims 20, 21, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hay et al. (US 2002/0059091 A1) in view of O'Brien ("Grain Marketing Plans for Farmers"), and further in view of Friedman ("Dictionary of Business Terms").

(A) Referring to claims 20 and 21, Hay and Remley do not disclose computing a numeric weighted average and wherein the weighted average includes a weighted Z-factor.

Friedman discloses a weighted Z score (p. 757 of Friedman).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Friedman within Hay and Remley. The motivation for doing so would have been to predict future outcomes.

(B) Referring to claim 22, Hay, Remley, and Friedman do not expressly disclose a weighted marginal income rate. However, it would have been obvious to a person of ordinary skill in the art at the time of the invention to include the rate for the motivation of determining the financial risks associated with the enterprise.

Claims 24-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hay et al. (US 2002/0059091 A1) in view of O'Brien ("Grain Marketing Plans for Farmers"), and further in view of Schneider (US 6,990,459 B2).

(A) Referring to claim 24, Hay and Remley do not expressly disclose wherein the step of calculating the level of crop revenue insurance comprises eliciting crop production information concerning the agricultural enterprise; eliciting debt obligations of the agricultural enterprise; and selecting a crop revenue insurance level greater than the debt obligations to provide a best level of crop revenue insurance and thereby underwriting financing to the producer by the marketing plan and underwriting the marketing plan by the best level of crop revenue insurance.

Schneider discloses wherein the step of calculating the level of crop revenue insurance comprises eliciting crop production information concerning the agricultural enterprise; eliciting debt obligations of the agricultural enterprise; and selecting a crop revenue insurance level greater than the debt obligations to provide a best level of crop revenue insurance and thereby underwriting financing to the producer by the marketing plan and underwriting the marketing plan by the best level of crop revenue insurance

(col. 2, lines 8-39, col. 3, lines 42-50, col. 4, line 62 – col. 5, line 14, and col. 5, lines 31-44 of Schneider).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of Schneider within Hay and Remley. The motivation for doing so would have been to assist farmers with their planning decisions in the context of the farmer's overall risk profile (col. 4, lines 62-65 of Schneider).

(B) Referring to claim 25, Hay and Remley do not expressly disclose wherein the step of calculating the level of crop insurance includes a computer program, a displayable output for the crop revenue insurance level that provides the best crop insurance coverage level most likely to produce the most revenue; and a calculation component capable of receiving the inputs and performing mathematical operations on the inputs to produce the output.

Schneider teaches wherein the step of calculating the level of crop insurance includes a computer program, a displayable output for the crop revenue insurance level that provides the best crop insurance coverage level most likely to produce the most revenue; and a calculation component capable of receiving the inputs and performing mathematical operations on the inputs to produce the output (col. 5, lines 2-23, col. 2, line 64 – col. 3, line 6, Fig. 2, and col. 5, line 66 – col. 6, line 15 of Schneider).

Schneider does not expressly teach the specific data recited in claim 25; however, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural

elements. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP § 2106.

Further, it would have been obvious to one having ordinary skill in the art at the time of the invention, to modify the calculation parameters disclosed in the prior art to include similar input parameters with the motivation of accommodating user preferences in prioritizing the type of inputs utilized.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of Schneider within Hay and Remley. The motivation for doing so would have been to obtain the optimal farm management plan for a particular farmer (col. 3, lines 48-51 of Schneider).

(C) Referring to claim 26, Hay discloses wherein the computer program further comprises a type of crop input (para. 33 and para. 62 of Hay).

(D) Referring to claims 27 and 28, Hay teaches a computer program and calculation component that receives inputs (para. 33 and para. 62 of Hay). Hay does not expressly teach the specific data recited in claims 27 and 28; however, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific data. Further, the structural

elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP § 2106.

Further, it would have been obvious to one having ordinary skill in the art at the time of the invention, to modify the calculation parameters disclosed in the prior art to include similar input parameters with the motivation of accommodating user preferences in prioritizing the type of inputs utilized.

(10) Response to Argument

In the Appeal Brief filed 13 August 2007, Appellant makes the following arguments:

A) Neither Hay, nor Remley et al. nor O'Brien, alone or in combination teach "determining a financial assessment score based on the financial assessment."

B) Neither Hay, nor Remley et al. nor O'Brien, alone or in combination teach "calculating a marketing financial risk score wherein the marketing financial risk score is defined as a numeric value describing financial risks related to markets and income of each agricultural enterprise associated with the agricultural business."

C) Neither Hay, nor Remley et al. nor O'Brien, alone or in combination teach "determining pre-sell quantities using the financial assessment score, the marketing financial risk score and a price risk associated with a commodity market."

D) Neither Hay et al. nor Remley et al. nor O'Brien disclose "calculating a level of crop revenue insurance to assure a predetermined level of income from sale of predetermined quantities of crops for use in meeting the financial obligations, such that the financing is underwritten by pre-selling and the pre-selling is underwritten by the level of crop revenue insurance."

E) Neither Hay et al. nor Remley et al. nor O'Brien disclose "electronically providing marketing information to the agricultural producers in order to update the written agricultural marketing plans...wherein the updated marketing information comprises probabilities of price targets."

F) Neither Hay et al. nor Remley et al. nor O'Brien, alone or in combination disclose "determining a marketing financial risk score for each agricultural enterprise of the business, the marketing financial risk score associated with financial risks related to markets and income of each of the agricultural enterprises."

G) The Examiner did not properly evaluate evidence of secondary considerations.

H) Claim 18's methodology is an income approach, assuring a first level of income (which could be used to guarantee debt payoff) and providing the opportunities for additional income in a manner that is tailored to the producer's ability to tolerate risks. O'Brien does not use an income approach, but a price approach. As such, O'Brien teaches away from the claimed invention.

I) The Examiner relies upon Friedman for teaching a weighted z-factor, yet its use and definition is with respect to a manufacturing business as opposed to an

agricultural business. Furthermore, the dictionary, does not explain how to use the Z-factor.

J) The Examiner recognizes that neither Hay, nor Remley or Friedman expressly disclose a weighted marginal income rate. Yet the Examiner finds that it would have been obvious to a person of ordinary skill in the art at the time of the invention to include the rate for the motivation of determining the financial risks associated with the enterprise. The Examiner is engaged in improper hindsight, without convincing evidence or reasoning and must be reversed.

K) Schneider is directed towards how to raise a crop and the invention of claim 17 from which claims 24-28 depend is directed towards how to sell the crop. Thus, the Examiner is engaged in improper hindsight by combining Hay et al. in view of O'Brien et al and Schneider et al.

Examiner will address Appellant's arguments in sequence as they appear in the brief.

Argument A:

In response to Appellant's first argument, the Examiner respectfully submits that Hay teaches at para. [0051] that the risk factor(s) can be financial in nature (e.g., farmer credit history). Hay then discloses that the risk factor data is valued using well known actuarial analysis. According to the Applicant's Specification, "a financial assessment **may** include a financial summary of grain business or livestock business" (page 18,

lines 7-9 of Specification) and "the financial rating **may** also take into account a number of credit parameters.....these credit parameters may include such information as whether the producer has an acceptable credit bureau report...." (page 18, lines 19-24 of Specification). As such, the Examiner's broadest reasonable interpretation of "financial assessment" would include the farmer's credit history as information to perform a financial assessment.

In addition, it is irrelevant whether the applied references contain elements in addition to or beyond those claimed by Applicant (i.e., that Hay's clear intent is to use its pricing engine to develop an offer of a production contract), and not required by Applicant, insofar as Applicant uses the word "comprising" at end of each preamble of the pending claims. The Examiner understands this claim language to mean "having at least". If Applicant desires to claim an invention that is exclusively limited to only those elements specifically recited in the claims, the Examiner suggests that Applicant use the term "consisting of" rather than "comprising."

Arguments B & F:

In response to Appellant's second and sixth arguments, the Examiner respectfully submits that Hay discloses risk factors for each farm, market prices expected to be earned, profit to be earned by the agricultural entity, etc. The engine in Hay calculates the price at which the farm of interest would have a financial incentive to grow the crop of interest (para. [0052] of Hay). The Examiner respectfully submits that the risks in Hay are financial (note para. 51 of Hay) and are related to markets and

revenue (note para. 52 and para. 65 of Hay). As such, it is readily apparent that Hay discloses a numeric value describing financial risks related to markets and income of each agricultural enterprise associated with the agricultural business.

Argument C:

In response to Appellant's third argument, the Examiner respectfully submits that Hay teaches identifying a farm's capability to grow a predefined quantity of the crop of interest (see para. 42 of Hay) and the quantity of the crop of interest the agricultural entity would like to sell (see para. 62 of Hay). As such, it is readily apparent that Hay teaches determining pre-sell quantities.

Argument D:

In response to Appellant's fourth argument, the Examiner respectfully submits that O'Brien discloses the use of crop insurance (see pages 13-14 and 19 of O'Brien). The purpose of the insurance is to protect the proportion of expected production or expected crop revenue (page 19 of O'Brien). As such, it is readily apparent that O'Brien teaches that the pre-selling is underwritten by the level of crop insurance.

Argument E:

In response to Appellant's fifth argument, the Examiner respectfully submits that Remley was relied on for the feature of "probabilities of price targets" (note para.[0005] and Fig. 4 of Remley). In addition, the Examiner is concerned that, aside from merely

alleging that certain claimed features are not obvious from Hay, Remley, and O'Brien, essentially in the form of blanket statements, Applicant does not point to any specific distinction(s) between the features disclosed in the references and the features that are presently claimed. In particular, 37 CFR 1.111(b) states, "A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the reference does not comply with the requirements of this section." Applicant has failed to specifically point out HOW the language of the claims patentably distinguishes them from the applied references. Also, arguments or conclusions of Attorney cannot take the place of evidence. *In re Cole*, 51 CCPA 919, 326 F.2d 769, 140 USPQ 230 (1964); *In re Schulze*, 52 CCPA 1422, 346 F.2d 600, 145 USPQ 716 (1965); *Mertizner v. Mindick*, 549 F.2d 775, 193 USPQ 17 (CCPA 1977).

Argument G:

In response to Appellant's seventh argument, Applicant has requested that the Examiner consider additional evidence of non-obviousness. In particular, Applicant relies on an affidavit filed under 37 CFR 1.132 and attached exhibits, as evidence of commercial success, praise by others, and unexpected results.

The declaration under 37 CFR 1.132 is insufficient to overcome the rejection of claims 15 and 17-29 based upon the Hay, Remley, and O'Brien references because:

(I) The declaration and attached exhibits fail to establish a clear nexus between the alleged commercial success and the invention as claimed. The evidence is not

commensurate in scope with the scope of the claims. *In re Tiffin*, 448 F.2d 791, 171 USPQ 294 (1971). In particular, there is nothing that directly ties the statements of the affidavit nor the materials mentioned in the exhibits with the language specifically recited in the instant claims. For example, the letters from Carroll County Sate Bank and Westside State Bank refer to a program that combines commodity marketing strategies to Federal Crop Insurance programs, features not present in all of the pending claims. Further, the courts have held that affidavits or declarations showing commercial success to the invention "described and claimed" or other equivalent indefinite language have little or no evidentiary value. *In re Troutman*, 1960 C.D. 308, 126 USPQ 56, 47 CCPA 308.

(II) In order to establish commercial success, the evidence must establish that the alleged commercial success is directly derived from the invention claimed, in a marketplace where the consumer is free to choose on the basis of objective principles, and that such success is not the result of heavy promotion or advertising, shift in advertising, consumption by purchasers normally tied to Applicant or assignee, or other business events extraneous to the merits of the claimed invention. *In re Magneli et al.*, 176 USPQ 305 (CCPA 1973); *In re Noznick et al.*, 178 USPQ 43 (CCPA 1973). There is no statement provided regarding whether this program was used by purchasers normally tied to Applicant or assignee.

(III) As per the affidavit of Gerald B. Murphy, it is respectfully submitted that the affidavit of Gerald B. Murphy is insufficient to overcome the grounds of rejection given in the previous Office Action because it appears to be self-serving in that the affidavit

merely provides statements made by the named inventor. As such, the Examiner is not sure how much weight can be attributed to such statements, as they are neither positively and definitely confirmed or corroborated by other third parties/objective affiant(s), for the reasons set forth above, and because no other forms of hard evidence (i.e., graphs, charts, sample survey forms, official survey results) have been provided to evidence the averred statements.

In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

Argument H:

As per Appellant's eighth argument, the Examiner respectfully submits that O'Brien discloses (see page 4 of O'Brien) factors affecting an individual's marketing plan, such as attitudes toward price and income risk. As such, it is readily apparent that income is a factor in O'Brien.

Argument I:

As per Appellant's ninth argument, the Examiner respectfully submits that a dictionary definition was used to show that Applicant did not invent the Z-score and that it is old and well-known. The Z-score equation disclosed in Friedman is identical to the Z-factor disclosed at page 22 of Applicant's specification. In addition, a motivation was provided to combine Friedman within Hay. Since the agricultural production business is

risky, the use of a prediction models, such as the Z factor, would have been obvious to a person of ordinary skill in the art.

Furthermore, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Argument J:

In response to Appellant's tenth argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Argument K:

As per Appellant's eleventh argument, the Examiner disagrees that Schneider is merely directed towards how to raise a crop. It is respectfully submitted that Schneider

is directed towards an optimal farm management plan (see col. 3, lines 48-51 of Schneider). It is readily apparent that Schneider is concerned with the selling of crops, as evidenced by Schneider's evaluation of risk management strategies and the benefits or opportunity costs available through futures options, forward contracting, farm programs and diversification (col. 4, lines 38-41 of Schneider).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Lena Najarian



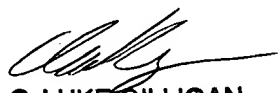
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November 30, 2007

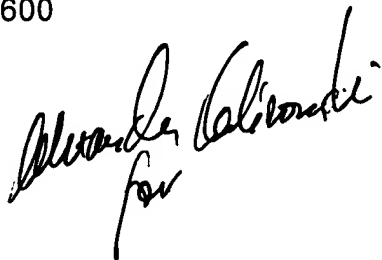
Conferees:



C. Luke Gilligan
Primary Examiner
Tech Center 3600


C. LUKE GILLIGAN
PRIMARY EXAMINER
TECHNOLOGY CENTER 3600

Vincent Millin


for

Application/Control Number:
09/777,761
Art Unit: 3626

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Appeals Conference Specialist
Tech Center 3600

JOHN D. GOODHUE
McKEE, VOORHEES, & SEASE
801 GRAND – SUITE 3200
DES MOINES, IOWA 50309-2721